2. *Nature of the Proceedings Below.*

This was a suit instituted in the Superior Court of Maricopa County, Arizona, by the Federal Land Bank of Berkeley, hereinafter referred to as the petitioner, and Samuel S. Warner, *et al.*, hereinafter referred to as the respondents, to foreclose a mortgage given by the respondents to the petitioner to secure a loan in the principal sum of $7,200.

3. *History and Facts of Case Below.*

The petitioner is one of the twelve Federal land banks chartered by the Federal Farm Loan Board[1] under the provisions of an Act of Congress approved July 17, 1916, and Acts amendatory thereto, known and cited as the Federal Farm Loan Act (12 U. S. C., ch. 7). The petitioner is authorized and empowered to operate and do business in the Eleventh Federal Land Bank District comprising the States of Arizona, California, Nevada and Utah. The business of the petitioner is to make loans to farmers and to take as security therefor first mortgages on farm lands duly qualified under the provisions of the said Federal Farm Loan Act.

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[1]The Farm Loan Board consisted of the Secretary of the Treasury and six members, to be appointed by the President, Section 3; 12 U. S. C., Section 652. After the entry of the final judgment in this cause, the Federal Farm Loan Board was abolished and its functions were transferred to the Farm Loan Commissioner, subject to the jurisdiction and control of the Farm Credit Administration, by Executive Order of the President, No. 6084 of March 27, 1933; the name of the office of the Farm Loan Commissioner was afterward changed to that of Land Bank Commissioner, by Act of June 16, 1933, Session Laws, First Session 1933, 273.

Federal Land Bank of Columbia v. *Gaines*, No. 112, October Term, 1933.

On November 1, 1922, the respondents, Samuel S. Warner and Lydia S. Warner, his wife, executed and delivered to this petitioner their certain promissory note in the principal amount of $7,200, together with their mortgage covering certain real property situate in Maricopa County, State of Arizona, as security for the payment of said note. The mortgage agreement so executed and delivered by these respondents contained the following stipulation:

> "(10) That in case of institution of suit to foreclose this mortgage, the mortgagors shall pay, as a part of the debt hereby secured, all costs and legal expenses and reasonable attorney's fee to be fixed by the Court, and that said attorney's fee is and shall be a lien upon said premises and secured by this mortgage * * *."

The respondents having defaulted in the payments provided for in the aforesaid promissory note, this action to foreclose the mortgage was begun in the Superior Court of Maricopa County, Arizona. The petitioner, in its foreclosure complaint, asked for a reasonable attorney's fee of $125 under the provisions of the aforesaid stipulation contained in paragraph 10 of the mortgage agreement. Petitioner in its complaint averred "That the whole of said fee, if allowed by the Court, is to be paid to and be retained by the attorneys of record in this case." (R. 4.) The reasonableness of this amount, no part of which was sought by petitioner for any purpose other than the actual payment of its counsel fees, was not at any time disputed.

The respondents in their answer admitted the execution and delivery of the aforesaid promissory note and mortgage, but denied that the petitioner was entitled to any attorney's fee. Such denial was based upon the claim that the stipulation contained in paragraph 10 was unenforceable in that it was in violation of and prohibited by the provisions of the Federal Farm Loan Act, as amended.

The trial court, in its decree of foreclosure (R. 13), denied an attorney's fee to the petitioner and this petitioner took an appeal from this decision to the Supreme Court of Arizona, that being the court of last resort in the State. The appeal came on for hearing and the Supreme Court of the State of Arizona, on July 1, 1933, affirmed the decision of the Superior Court of Maricopa County to the effect that the Federal Farm Loan Act forbids a Federal land bank from recovering a reasonable fee to be paid to its attorney in the event of the foreclosure of one of its mortgages. The opinion below is set forth in the record (R. 22). (*Federal Land Bank of Berkeley* v. *Warner*, — *Ariz.* —; 23 P. (2d) 563.)

II.

Specification of Error to Be Urged.

The final decision and judgment of the Supreme Court of Arizona is erroneous in that it construes and interprets the Federal Farm Loan Act, 12 U. S. C. ch. 7, as prohibiting and denying the petitioner and the respondents the right to include in the mortgage agreement a stipulation to the effect that the mortgagors shall pay an attorney's fee in the event of the default of the latter in carrying out the terms, conditions, and covenants of the mortgage agreement and that, therefore, under such Federal statute this petitioner cannot recover any attorney's fee when the mortgage is foreclosed.

III.

The Question Presented.

The question involved is whether the provisions of the Federal Farm Loan Act, either expressly or impliedly, forbid a Federal land bank from collecting a reasonable attorney's fee in the event of the foreclosure of one of its

mortgages, if such fee may be collected under the decisions and practice of the jurisdiction in which the mortgaged contract is enforceable.

IV.

Summary of Argument.

1. It was the intention of Congress under the Federal Farm Loan Act that the status of mortgage liens accepted by the Federal land banks, and the procedure to be followed in case of foreclosure and the subsequent rights of the parties to such foreclosure proceedings, should be fixed by the laws of the State in which the mortgaged premises are situated (12 U. S. C. §§ 971, 972).

2. A stipulation in a mortgage agreement that the mortgagor shall pay an attorney's fee in the event of foreclosure is legal and enforceable under the laws of the State of Arizona and the decisions of the Supreme Court of Arizona. The Supreme Court of the State of Arizona so held in this decision.

3. The provisions of sections 771, 781, 791 and 983 of 12 U. S. C., respecting fees and charges which a Federal land bank is allowed to make and collect, are inapplicable to the question involved in this assignment of error. These provisions of the Federal Farm Loan Act have to do only with fees and charges incident to negotiating, making and carrying mortgage loans. They are in no way connected with the proper damages and costs which may be recovered by a Federal land bank to indemnify it for the expense and cost incident to enforcing the legal remedies available to a mortgagee.

4. Under sections 642 and 781, 971 and 972 of Title 12, U. S. C., this petitioner and the other Federal land banks

are permitted and authorized to protect themselves against loss in the case of default under any mortgage.

5. Under Section 676, *Fourth*, of 12 U. S. C., this petitioner is expressly empowered "To sue and be sued, * * * in any court of law or equity, as fully as natural persons", and is therefore entitled to an award of attorney fees in a foreclosure action brought in an Arizona court.

V.

ARGUMENT.

1. It was the intention of Congress under the Federal Farm Loan Act that the status of mortgage liens accepted by the Federal Land Banks, and the procedure to be followed in case of foreclosure and the subsequent rights of the parties to such foreclosure proceedings, should be fixed by the laws of the State in which the mortgaged premises are situated (12 U. S. C., Sections 971, 972).

Section 30 of the Federal Farm Loan Act (Section 971 of Title 12, U. S. C.) provides in part as follows:

> "It shall be the duty of the Farm Loan Commissioner to make examination of the laws of every State of the United States and to inform the Federal Farm Loan Board as rapidly as may be whether in his judgment the laws of each State relating to the conveying and recording of land titles, *and the foreclosure of mortgages or other instruments securing loans*, * * * are such as to assure the holder thereof adequate safeguards against loss in the event of default on loans secured by any such mortgages." (Italics added.)

The same section (§ 972) provides further that until such examination of the laws of any particular State is made by the Farm Loan Commissioner as provided in section 971, and until such laws are found satisfactory in the judg-

ment of said Commissioner to protect the Federal land bank against *loss in the event of default* on loans secured by any such mortgages, that mortgages taken by the bank in such State are ineligible as the basis for an issue of farm loan bonds. In order for the Farm Loan Commissioner to determine whether or not the laws of any particular State were such as to assure the bank of adequate safeguards against loss in the event of default on the loans which it might take secured by such mortgages the Commissioner was empowered to use the office of the Attorney General of the United States or to employ special counsel in any State for the purpose of giving him the needed legal advice or assistance as to the sufficiency of such State laws to protect the bank and its mortgages.

In section 973 of the Act it is provided that in the event the Commissioner shall find the laws of any State are not such as to assure adequate safeguards against loss in the event of default on loans secured by the bank mortgages, and at the request of the Executive of such State, the Federal Farm Loan Board shall prepare a statement setting forth in what respect the requirements of said Board cannot be complied with under the existing laws of said State.

In other words, the provisions of sections 971, 972 and 973 are explicit in requiring that the laws of any State in which any Federal land bank may make loans shall be sufficient to assure protection to the mortgages which the bank may take and to insure the bank against any loss in the event of default on its loans. If any such State is found in which the laws are not adequate to assure such safety then the Chief Executive of the State may request the Federal Farm Loan Board to have such deficiencies in the laws of the State pointed out to him in order that he and the State Legislature may have such amendments made thereto as will be sufficient to give the farmers in his State the ad-

vantages of borrowing from the Federal land bank of the district in which said State is situated.

It is clear from these provisions of the Act that they have to do with the question whether the Farm Loan Board considers that land banks are adequately secured so far as the laws of a particular State are concerned. It is purely a matter resting in the discretion of the Board as to whether the laws of such State are adequate to assure a Federal land bank protection against loss in the event of default on loans. It is clear also that it was the intention of the Congress that the status of mortgage liens accepted by the Federal land banks, the procedure to be followed in case of foreclosure, and the subsequent rights and remedies of the parties to such foreclosure proceedings are to be governed by the laws of the State in which the mortgaged premises are situated, and not by the Federal Farm Loan Act.

The provision in a mortgage for the payment by the mortgagor of a reasonable attorney's fee as a part of the remedy, in the event the mortgagee is compelled to foreclose his mortgage, comes within the category and the phraseology used in section 971 of the Act as above referred to. It is one of the safeguards provided by State law against loss to the mortgagee in the event of default by the mortgagor. An attorney's fee in case of foreclosure is not a cause of action, but, like the cost of the suit, it is an important part of the remedy afforded by the cause of action. It is in the nature of an indemnity or damages to the mortgagee for expenditures necessarily made by him to protect his interests under the mortgage agreement.

> "An agreement by a debtor to pay a reasonable attorney fee in case his creditor is compelled to incur the expense of an action to collect the debt, *is only an agreement to so far reimburse the creditor the loss which he may sustain by reason of the debtor's failure*

to perform his contract to pay his debt. In justice and fairness it stands on as high ground as the right to recover damages for the non-performance of any contract; as to deliver grain or goods at a certain time and place." (Italics added.)

Wilson Sewing Machine Co. v. *Moreno* (C. C. Oregon, 1879), 7 Fed. 806, 809, 810.

"The outlay for an attorney's fee is a necessary consequence of the litigation, and since it must fall upon one party or the other, it is reasonable to impose it upon the party whose refusal to pay a just claim renders the litigation necessary. The allowance of ordinary costs of suit to the prevailing party rests upon the same principle. 2 Bacon, Abr., title costs. Numerous cases in the state courts have sustained similar legislation. *Vogel* v. *Pekoc*, 157 Ill. 339, 344, 346, 30 L. R. A. 491, 42 N. E. 386; *Burlington, C. R. & N. R. Co.* v. *Dey*, 82 Iowa 312, 340, 12 L. R. A. 436, 3 Inters. Com. Rep. 584, 31 Am. St. Rep. 477, 48 N. W. 98; *Cameron* v. *Chicago, M. & St. P. R. Co.*, 63 Minn. 384, 388, 31 L. R. A. 553, 65 N. W. 652; *Wortman* v. *Kleinschmidt*, 12 Mont. 316, 330, 30 Pac. 280. *If a reasonable penalty may be imposed for failure to satisfy a demand found to be just it follows a fortiori that costs and an attorney's fee may be.* See *Atchison, T. & S. F. R. Co.* v. *Matthews*, 174 U. S. 96, 105, 43 L. ed. 909, 913, 19 Sup. Ct. Rep. 609; *Farmers' & M. Ins. Co.* v. *Dobney*, 189 U. S. 301, 304, 47 L. ed. 821, 825, 23 Sup. Ct. Rep. 565." (Italics added.)

Missouri, K. & T. R. Co. v. *Cade*, 233 U. S. 642, 34 Sup. Ct. Rep. 678.

2. A stipulation in the mortgage agreement that the mortgagor shall pay an attorney's fee in the event of foreclosure is legal and enforceable under the laws of the State of Arizona and the decisions of the Supreme Court of Arizona.

The opinion of the Supreme Court of Arizona in this case so held. The Court stated (R. 25):

"We have frequently recognized and enforced contracts to pay attorneys' fees in foreclosure proceedings. *O. S. Stapley Co.* v. *Rogers*, 25 Ariz. 308, 216 Pac. 1072; *Maxey* v. *Somerton State Bank*, 22 Ariz. 371, 197 Pac. 894; *Amirault Estate*, 22 Ariz. 122, 194 Pac. 1099; *McClintock* v. *Bolton*, 6 Ariz. 370, 57 Pac. 611. In this respect we are in line with the great majority of the courts. 41 *C. J.* 415, sec. 264. Attorneys' fees are not costs because they are not provided for or fixed by law. They are the result of contract between the parties whereby, in consideration of the mortgage loan, the mortgagor agrees to repay the principal, interest, etc., and, in case suit is brought to collect, to pay the mortgagee a reasonable attorney's fee. In other words, the mortgagor assures the mortgagee that he will be put to no outlay for attorney's fees in collecting his debt. * * * the stipulation in the mortgage to pay an attorney's fee when it was put in there was legal, and is still legal, under the decisions and laws of this state."

3. The provisions of Sections 771, 781, 791, and 983 of 12 U. S. C., respecting fees and charges which a Federal land bank is allowed to make and collect, are inapplicable to the question involved in this assignment of error. These provisions of the Federal Farm Loan Act have to do only with fees and charges incident to negotiating, making, and carrying mortgage loans. They are in no way connected with the proper damages and costs which may be recovered by a Federal land bank to idemnify it for the expense and cost incident to enforcing the legal remedies available to a mortgagee.

The Supreme Court of the State of Arizona bases its conclusion in denying an attorney's fee to this petitioner upon the language contained in Sections 771, 781, 791 and 983 of the Act.

The particular language in each of the foregoing sections which is specifically referred to by the Supreme Court of Arizona in its opinion is as follows:

SECTION 771. "Every such mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan * * *; second, a charge for administration and profits at a rate not exceeding 1 per centum per annum on the unpaid principal, said two rates combined constituting the interest rate on the mortgage; * * *"

SECTION 781. "Every Federal land bank shall have power, subject to the limitations and requirements of this Act—

"Ninth. * * * To charge applicants for loans and borrowers, under rules and regulations promulgated by the Federal Farm Loan Board [Farm Credit Administration], reasonable fees not exceeding the actual cost of appraisal and determination of title. Legal fees and recording charges imposed by law in the State where the land to be mortgaged is located may also be included in the preliminary costs of negotiating mortgage loans. The borrower may pay such fees and charges or he may arrange with the Federal land bank making the loan to advance the same, in which case said expenses shall be made a part of the face of the loan and paid off in amortization payments. Such addition to the loan shall not be permitted to increase said loan above the limitations provided in 12 U. S. C. 771."

SECTION 791. "No Federal land bank shall have power—

"Fifth. * * * To demand or receive, under any form or pretense, any commission or charge not specifically authorized in this Act."

SECTION 983. * * * "No land bank * * * shall charge or receive any fee, commission, bonus, gift, or other consideration not herein specifically authorized."

It is apparent from a study of the provisions of said Sections 771 and 781 of the Act that the interest, fees and charges therein specifically authorized are those which are incidental to the negotiation and carrying of the mortgage loan. Such fees and charges only have to do with transactions prior to and during the life of the loan contract. They are in no manner or way connected with the proper damages and costs which may be recovered by the bank to indemnify it for the expense and cost incident to enforcing its legal remedies after default. The limitations of the law respecting fees and charges are designed to protect the borrowers under the Land Bank System from unjust charges connected with the making and carrying of their loans.

Likewise, the language of Section 791 to the effect that no Federal land bank shall have the power "To demand or receive, under any form or pretense, any commission or charge not specifically authorized in this Act" has to do only with the negotiating and the carrying of the loan itself. Such phrase "commission or charge" as used in this section is further qualified and defined in the language of Section 983 which is the penalty clause in respect to a breach by any bank of receiving any commission or charge not specifically referred to in the Act. This section provides the penalty for any land bank or national farm loan association organized under the Act which shall charge or receive "any fee, commission, bonus, gift, *or other consideration* not herein specifically authorized." (Italics added.)

It was contended by counsel for respondents in his argument before the Supreme Court of Arizona, and the Supreme Court adopted such contention in his opinion, that the words "commission or charge" and the words "fee, commission, bonus, gift, or other consideration" include,

and were intended by Congress to include an attorney's fee in event of foreclosure of a mortgage, and that, therefore, the Federal land bank cannot legally provide in its mortgage forms for an attorney's fee and that if it did so it was subject to the penalties referred to in Section 983.

Such contention entirely overlooks the meaning of the words which are used in these two sections. What is a "commission or charge" as used in section 791 of the Act? A commission or charge anticipates the rendering of some service by one party to another. It is the compensation allowed in recompense for such service. (1 Bouvier's Law Dictionary, p. 548.) These words legally import a consideration allowed as compensation in recompense for services, such as rendered by executors or trustees, factors, agents, etc. However, an attorney's fee when stipulated for in a mortgage is not a "commission or charge". It is not compensation for the rendering of service by the mortgagee to the mortgagor. As heretofore pointed out, the authorities hold that it is an indemnity or damage to which the mortgagee is entitled because of the default of the mortgagor in not complying with the contractual obligation of his contract.

When we come to a consideration of the words which are used in section 983, the penalty section of the Act, we find that "any fee, commission, bonus, gift," is qualified by the significant phrase "*or other consideration*". These words, used in the alternative, are significant and explain the prior words, "any fee, commission, bonus, gift". A "consideration", of course, is a recompense for services rendered, and as used in this section in respect to a Federal land bank can only mean that the land bank cannot receive any "other consideration" than that specifically designated in the Act in rendering service to a borrower. It is apparent, therefore, that the prohibition contained in section 791 and the penalty set out in section 983 refer to the

transactions between the bank and the borrower leading up to the making of the loan, or other service rendered by the bank to the borrower, and not to charges for court costs and attorneys' fees in connection with its remedy of foreclosure.

From the authorities it is apparent that attorneys' fees are regarded as being wholly unrelated to the consideration which is charged by the mortgagee in the form of interest, commissions, bonuses, etc., for making and carrying the mortgage loan. In reality, an attorney's fee is not a fee in the sense which the word is used in section 983. It is an expense necessarily incident to the remedy. The right of a mortgagee to demand indemnity against such expense by a covenant in the mortgage deed, and to enforce such covenant, is a part of the remedy. Under the procedure in most States, such provision is for the reimbursement of the mortgagee for the amount which he has been compelled to incur in fees to his attorney for the enforcement of the remedy; while in a few States the same end is achieved under a different practice by indemnifying the mortgagee against the incurring of an expense for attorney's fees, the expense in such States being met by the mortgagor direct, and the award or judgment running in favor of the attorney.

There is a fundamental rule of construction of a corrective or penal statute such as section 983 of the Act that the evil or wrong legislated against must be kept clearly in view. The evil or wrong which the Congress had in mind when drafting section 983 is not difficult to determine. It is quite universal knowledge that loans through some mortgage companies and lending associations are made upon unreasonable fees and commissions exacted by one or more of the employees of the lending concern which greatly increases the cost to the borrower. It appears from the committee reports and statements of those in

charge of the measure, that at the time of the enactment of the Federal Farm Loan Act, the Congress was fully acquainted with the evils, and not only intended that the interest rate for the borrower from a land bank should be lowered and kept uniform, but also intended to protect him against exorbitant, usurious charges, fees, commissions, etc., directly or indirectly made. (See page 49 of Appendix.) The legislative body had in mind the cost to the borrower in procuring and carrying a loan. The corrective effect and the penalty features are limited to charges made in the closing of the loan and other charges for services rendered by the bank to the borrower and consequently have nothing to do with the remedy in case of default or in the foreclosure of the mortgage.

Can it be conceived that the Congress intended to prohibit Federal land banks from collecting their "damages and costs" in the event of a foreclosure by providing in Section 791 that they should not demand or receive "any commission or charge not specifically authorized"? Obviously, this could not be the case, when the same Congress provided so carefully in Section 971 that the Farm Loan Commissioner should satisfy himself that the laws of each State relating to the foreclosure of mortgages were such "as to assure the holder thereof adequate safeguards against loss in the event of default". It is further provided in Section 676 of the Act; that the banks through their boards of directors should exercise, subject to law, "such incidental powers as shall be necessary to carry on the business herein described"; that they might sue and be sued as natural persons in any court of law or equity; and that, subject to the supervision of the Federal Farm Loan Board, the directors of each bank should prescribe the manner in which its general business should be

conducted "and the privileges granted to it by law exercised and enjoyed".

In view of these provisions, are we to say that the Federal land banks, which were organized for the specific purpose of engaging in the farm mortgage business, may not exercise the privilege enjoyed by natural persons and others engaged in similar enterprises of inserting provisions in their mortgages intended to protect them against loss in the event of default? Yet, if the contention of the respondents be carried to its ultimate conclusion, the banks could not in any foreclosure suit recover any necessary court costs and damages since these costs are not specifically mentioned in the Act.

It is inconceivable that Congress intended to inflict upon the bank the hardship and injustice of suffering a loss on every mortgage it foreclosed for the collection of its debt.

The courts have held universally that when strict construction of the language of a statute will lead to unreasonable, unjust or absurd consequences, it is the duty of the courts to find a reasonable interpretation consistent with the purposes for which the law was enacted.

In 25 R. C. L., under the caption "Statutes", beginning at page 959, it is said:

> "Another occasion for construing a statute is where uncertainty as to its meaning arises not alone from ambiguity of the language employed, but from the fact that giving a literal interpretation to the words will lead to such unreasonable, unjust or absurd consequences as to compel a conviction that they could not have been intended by the legislature." * * *
>
> "252. In General—In construing a statute, the intention of the legislature is to be ascertained not merely from the language of the act taken as a whole, but, where the language is not free from ambiguity, from the application of the act to existing circumstances and necessities. When the words of a statute

are not explicit, the intention of the legislature is to be collected from the context, by considering the subject matter, by looking to the occasion and necessity for the law and the circumstances under which it was enacted, to the mischief to be remedied, the object to be obtained and the remedy in view, by comparing one part with the other and giving effect to the whole, by looking to the old law upon the subject, if any, and to other statutes upon the same or similar subjects, by considering the effects and consequences of a particular construction, and by looking to contemporaneous legislative history and contemporaneous construction of the statute." (Pages 1012-13.) * * *

"256. *Unreasonableness.*—One of the established rules for the construction of statutes is that they should have a rational, sensible construction, if their meaning is at all doubtful. When the language of a statute fairly permits, a construction which will lead to an unreasonable result should be avoided." (Pages 1018-19.) * * *

"258. *Hardship or Injustice.*—It is to be presumed that the legislature did not intend a law to work a hardship or injustice, and it is a reasonable and safe rule of construction to resolve any ambiguity or absurdity in a statute in favor of a just and equitable operation of the law. The terms employed by the legislature are not to receive an interpretation which conflicts with acknowledged principles of justice if another sense, consonant with those principles, can be given to them. It is a universal rule in the exposition of statutes that the intent of the law, if it can be clearly ascertained, shall prevail over the latter, and this is especially true where the precise words, if construed in their ordinary sense, would lead to manifest injustice. * * * Where a statute is general in its terms, and not clear and definite in its letter and scope, courts may give it such a construction as will make its operation just and beneficial." (Page 1022.)

In the light of these authorities are we to say that the officers and directors of the Federal Land Bank of Berkeley are to be held criminally responsible, under the provisions of Section 983 of the Act, for a practice which they have followed from the organization of the bank, of recovering court costs and attorneys' fees in order to save it from losses incurred in connection with foreclosure, when the same Act requires those charged with the management of the bank to protect the interests of its shareholders and bondholders? Obviously, items of this character may be recovered by the bank as damages and costs incident to the prosecution of an action for the breach of a contract which it is authorized to make. To state the proposition is to answer it.

4. Under Sections 642 and 781, 971, and 972 of Title 12, U. S. C., this petitioner and the other Federal Land Banks are permitted and authorized to protect themselves against loss in the case of default under any mortgage.

Section 642 of the Act states:

> "'First mortgage' and 'farm loan bonds' defined.—Wherever the term 'first mortgage' is used in this Act it shall be held to include such classes of first liens on farm lands as shall be approved by the Federal Farm Loan Board, and the credit instruments secured thereby."

Over the period of seventeen years the Federal Farm Loan Board has approved and authorized the use by the twelve Federal land banks of mortgage forms containing provisions similar to that of Section 10 of the mortgage contract in this case and providing for the payment of an attorney's fee in the event of foreclosure. The Federal Farm Loan Board has never regarded the costs, expenses and attorneys fee incident to the foreclosure of a mort-

gage as items included within the provisions of Sections 791 and 983 of the Act. The Act requires that the Federal Farm Loan Board shall approve these "credit instruments" or mortgage contract forms used by the land banks.

It is a well-recognized rule of statutory construction that serious consideration must be given by the Court to the interpretation of the executive body charged with its administration. In the case of *Illinois Surety Company* v. *U. S.*, 215 Fed. 334, Judge Knapp of the Circuit Court of Appeals, 4th Circuit, in rendering the opinion of the court, stated (p. 338):

> "It is familiar doctrine that the construction given to a statute by officials charged with its administration will be upheld by the courts unless convincing reason to the contrary is found in the language or purpose of the enactment. *New Haven R. R. Co.* v. *Interstate Commerce Commission*, 200 U. S. 361, 401, 26 Sup. Ct. 272, 50 Law Ed. 515."

See also *Brewster* v. *Gage*, 280 U. S. 327, 50 Sup. Ct. 115, p. 117; *New York Life Insurance Co.* v. *Burbank* (Iowa), 216 N. W. 742, p. 744.

In Sections 971 and 972 of the Act, as hereinbefore referred to, it is expressly provided that the Farm Loan Commissioner shall make an examination of the laws of every State of the United States relating to the foreclosure of mortgages or other instruments securing loans in order to ascertain whether the laws of any State "*are such as to assure the holder thereof adequate safeguards against loss in the event of default on loans secured by any such mortgages.*" (Italics added.) Furthermore, subdivision "Third" of Section 781 provides that the land bank shall have the power "to empower national farm loan associa-

tions, or duly authorized agents, to collect and immediately pay over to said land banks the dues, interest, amortization installments *and other sums payable under the terms, conditions, and covenants of the mortgages* * * *." (Italics added.)

In granting this power to the land bank it is evident that the Congress intended that a mortgage might include provisions for the payment by the mortgagor of sums other than the dues, interest or amortization installments. Therefore, under the authority contained in Section 781, when, with the approval of the Federal Farm Loan Board, such mortgages include these provisions (that is, for the payment of sums under the mortgage), the bank is empowered to employ agents to collect any such sums that may be due "under the terms, conditions, and covenants of the mortgages." The phraseology of this section alone is sufficient to give a land bank the power and authority to include in its mortgage form a provision providing for the payment of an attorney's fee in the event of foreclosure.

It cannot be argued seriously that Congress did not know when it framed this Federal Farm Loan Act that the usual, if not the almost universal, practice in drawing mortgage agreements was to include therein a provision or stipulation to the effect that the mortgagor should pay an attorney's fee in the event, by his default, the mortgagee was compelled to foreclose the mortgage in order to protect his loan. Congress, being aware of this universal practice in the mortgage field, and of the further fact that it was sanctioned by law and judicial decisions in practically all jurisdictions in the country, would have specifically included in the Act an unmistakable, unequivocal prohibition against the land bank stipulating for an attorney's fee in its mortgages if it intended that the land bank should not avail itself of this safeguard and this right to protect it-

self against an expense thrust upon it by the default of the mortgagor himself.

The intention of Congress was to establish by this Federal Farm Loan Act a sound banking system which would make credit available to farmers at low interest rates on the security of long time mortgages. Absolute safety and low cost of administration were the primary purposes of the Act. (House Document No. 494, 64th Congress, 1st Session.) The contention of the respondents to the effect that the bank cannot stipulate for an attorney's fee in its mortgages, if sound, would eliminate one important factor of safety in connection with the mortgages of a land bank which is a generally accepted and sanctioned safeguard to a mortgagee.

An interesting analogy might be made at this point which will tend to show the absurdity of the contention that the phraseology of Sections 791 and 983 of the Act prohibits the inclusion of an attorney's fee stipulation in the mortgage. There is nothing said in the Act as to whether or not the Bank is entitled to have included in its judgment of foreclosure the actual costs of the foreclosure suit. The respondents in this case did not object or demur to the inclusion in this foreclosure judgment of these costs of suit. The Supreme Court of Arizona and the Lower Court in the State of Arizona allowed and granted these costs. Yet these court costs, like the attorney's fee, are not a "charge specifically authorized in the Act." It would be just as consistent and logical for counsel for the respondents to have objected and for the Court to have refused these costs of suit as to refuse to permit this petitioner to have included in its judgment the attorney's fees stipulated for in the mortgage, inasmuch as "The allowance of ordinary costs of suit to the prevailing party rests upon the same

principle." (*Missouri, K. & T. R. Co. v. Cade*, 233 U. S. 642).

A further instance of the effect of this construction of the Act, upon the operations of the land banks, is very forcibly illustrated upon reference to the laws of those States, which authorize the use of "trust deeds" or "deeds of trust" to secure loans in place of mortgages. For example, the statutes of Virginia prescribe the form and terms of deeds of trust to secure debts. In this connection, section 5167 of the Virginia Code of 1930 provides in part:

> "Every deed of trust to secure debts or indemnify sureties, except so far as may be therein otherwise provided, shall be construed to impose and confer upon the parties thereto, and the beneficiaries thereunder, the following duties, rights and obligations in like manner as if the same were expressly provided for by such deed of trust, namely: * * *
>
> "(12) The trustee shall receive and receipt for the proceeds of sale, * * * and apply the same, first, to discharge the expenses of executing the trust, including a commission to the trustee of five per centum of the gross proceeds of sale; * * *."

If the construction placed upon the Farm Loan Act by the Supreme Court of Arizona is correct, it would be impossible for the land banks operating in Virginia to permit their trustees to collect a commission of 5 per cent on the gross amount of the purchase price received at a foreclosure sale. In other words, it would deprive the land banks of one of the adequate "safeguards against loss in the event of default" provided for in the Virginia law.

Furthermore, there is nothing specifically said or provided for in the Act as to the right of the bank to foreclose its mortgages in the event of default. Neither does the Act provide any procedure for the exercise of such

remedy. Can it be said, therefore, that the bank does not have the right to foreclose a mortgage? The right of foreclosure is a right provided for under the terms and provisions of the mortgage itself, not the Act. It would be just as consistent to contend that the bank cannot foreclose a mortgage because the Act does not specifically give it such right as to argue that an attorney's fee is not allowed because the Act does not, in so many words, provide for it.

5. Under Section 676, Fourth, of 12 U. S. C., this petitioner is expressly empowered "to sue and be sued, * * * in any court of law or equity, as fully as natural persons", and is therefore entitled to an award of attorney fees in a foreclose action brought in an Arizona court.

Section 676 of the Act provides that after the organization of a Federal land bank it shall have power—

> "Third. To make contracts.
>
> "Fourth. To sue and be sued, complain, interplead, and defend, in any court of law or equity, *as fully as natural persons.*" (Italics added.)

In view of the foregoing provisions it cannot be said that the Federal land banks, which were organized for the specific purpose of engaging in the farm mortgage business, may not exercise the privilege enjoyed by natural persons and others engaged in similar enterprises of inserting provisions in their mortgages intended to protect them against loss in the event of default. The only restriction in regard to the exercise of this privilege would be the laws of the specific state in which was situated the land in respect to which the mortgage was given. Had the

suit been brought by a natural person, such natural person would have been entitled to an award of an attorney's fee under the laws of the State of Arizona.

VI.

Conclusion.

In conclusion, we wish to call the Court's attention to a statement contained in the report of the Joint Committee on Rural Credits submitting "the draft of a bill [the Farm Loan Act] to provide a system of land-mortgage credits in the United States under Federal supervision." This statement reads as follows:

> "State Legislation.
>
> "It is well understood that the laws in the several States vary as to land titles, registry, exemptions, homestead rights, foreclosure, and equities of redemption. It is therefore made the duty of the farm loan board to investigate these questions in each State and to declare mortgages ineligible as security for farm-loan bonds in those States where the laws do not give adequate protection to those loaning on first mortgage. Very few, if any, States will fall within this rule, and they will doubtless amend their laws promptly in order to bring the benefits of the farm-loan system within reach of their citizens. Section 32." (House Document No. 494, 64th Congress, 1st Session, p. 16.)

The committee recognized that the laws of the several States vary as to "foreclosure and land titles" and that there would not be any conflict between State and Federal statutes with respect to such matters. The recognition of this fact shows conclusively that the Congress intended that the laws of the several States and not of the United States

should be followed and availed of when foreclosure becomes necessary. The governmental body "charged with the execution" of the Act has so construed it. The banks have put this construction into practical operation for a period of more than seventeen years. To hold otherwise would necessitate reading out of the law a number of plain and unambiguous provisions, and would deprive this "system of land mortgage credits" of an important remedy available to, and employed by, "natural persons" engaged in similar enterprises.

In the light of the foregoing, we respectfully submit that the decision of the court below should be reversed.

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APPENDIX.

Senate Calendar No. 135.

1st Session, 64th Congress. Report No. 144.

RURAL CREDITS.

February 15, 1916.—Ordered to be Printed.

[To accompany S. 2986.]

Mr. Hollis, from the Committee on Banking and Currency, submitted the following report:

"The Committee on Banking and Currency, to which was referred the bill (S. 2986) 'To provide capital for agricultural development, to create a standard form of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes,' generally referred to as the 'rural credits bill,' having considered the same, report it back favorably, with amendments, and as amended recommend that the bill do pass."

Modern Farming Requires Capital in Large Amounts—The American Farmer Has the Best Security in the World, Productive Land—This Bill Enables the Farmer to Obtain Capital for Productive Purposes, at Low Rates and for Long Terms, on the Security of His Farm.

Necessity for Farm Capital.

The successful farmer becomes more of a business man each year. He must use more machinery, buy more fertilizer, and sow better seed. He must erect better buildings, raise better stock, and grow better crops. He must store his produce in order to sell in a high market. He must pay cash in order to buy cheap. If he wishes to keep his children on the farm, he must make his home attractive. All of this costs money. He must have ready cash.

Difficulty of Securing Capital.

The farmer applies to the nearest bank for a loan and offers his farm as security. The banker makes excuses. He doesn't know the farmer; he doesn't know the value of his farm; he doesn't like to tie his demand deposits up in long-term loans; his commercial customers, who carry a substantial line of deposits, have the first claim. These excuses are well founded.

There may be additional excuses not so genuine, such as the scarcity of money, the hard hearts of the directors, unusual demands for loans, and the like. If the farmer gets a loan at all, he pays a high rate or he must be subject to foreclosure on short notice. He usually pays some one a large commission; he is subject frequently to substantial renewal fees; he is sometimes compelled to pay taxes on the mortgage as well as on the land; and he finds himself in the power of some hard-headed banker. He can not complain of this; it is the business of the banker to be hard-headed.

Usurious Rates of Interest.

In many parts of the country the farmer is charged extortionate and inexcusable rates of interest, regardless of usury laws and a decent regard for human necessities. He has a real grievance here.

Demand for Reasonable Facilities.

But, in spite of his grievance, the American farmer does not come to Congress with a hard-luck story. He does not ask the Government to bestow on him the public money that all the people have contributed in taxes. He does not demand that the Government become a banker in order to borrow money on bonds and loan the proceeds to him. He merely calls attention to the fact that farming has become a business demanding large amounts of capital; he points out the undoubted excellence of the security he offers; and he demands legislation that shall put it in the power of those who are interested, and those who have money to invest, to extend to him the credit he requires.

He desires the Government to authorize a system of land banks which shall duplicate for him the facilities now commanded by men engaged in manufacturing, in transportation, and in commerce.

Commercial Banks Not Suited to Farmers' Long-term Needs.

The Federal Reserve Act, passed by the last Congress, placed the capstone on a superb structure for commercial credit. It gathers the quick capital of the country into great reservoirs where it is readily available for the needs of trade. Member banks receive the cash deposits of the Nation, and must be prepared at all times to restore them on demand. They must, therefore, invest these deposits in short-time loans so that a steady stream of payments is flowing into the banks, giving them a chance to extend or contract their loans in response to the rise and fall in the supply of deposits. It follows that a commercial bank ought not to make many loans for longer periods than it takes to carry through the ordinary commercial transaction.

An effort was made, however, to extend accommodation to the farmer through the Federal Reserve Act. National banks were encouraged to make personal loans to farmers for periods of six months, and were to a limited extent permitted to loan on improved farm lands for periods not exceeding five years; but your committee is convinced that loans must be made available to farmers on long-term mortgage security through some medium other than the commercial bank.

We have seen that the commercial bank has a valid claim to demand deposits. This leaves for our consideration savings or time deposits and money seeking long-term investment.

Time Deposits Not Available for Long-term Mortgage.

The ordinary time deposit may be withdrawn on 30 or 60 days' notice. It is therefore not properly invested in long-term mortgages. Short-term mortgages or long-term personal credits are more appropriate. Even the mutual savings banks of the East, with their vast resources, will

not place a large percentage of their funds in farm mortgages. They dislike to loan on farm mortgages at all, and when they do make such loans they insist upon a demand note, or a note due in six months at best. It is fair to say, however, that such notes are often allowed to run indefinitely after they are due. But the farmer is in constant dread that he will be compelled to pay at an inconvenient time.

Money Seeking Long-term Investment.

Of money seeking long-term investment at low rates there is an abundant supply. It includes the ordinary savings of the school-teacher, clerk, minister, and wage earner; the proceeds of life insurance in the hands of widows and other beneficiaries; funds belonging to estates, minors, and wards in chancery in the hands of executors, guardians, and trustees; funds of insurance companies, benevolent orders, and societies of various kinds; endowments of colleges, hospitals, museums, and other institutions; and assets to be invested by receivers, courts, and governments. The aggregate of these is enormous. They require an investment that is absolutely safe and reasonably liquid in the sense that it may be converted into cash upon moderate notice; in other words, that it may find a ready market. A safe investment of this character need not carry a high rate of interest.

Investor and Farmer Brought Together for Mutual Profit.

Here we discover the funds that should be made available to the farmer on long-term mortgage. We may picture the owners of this vast wealth grouped on one side of a river, the farmers desiring loans grouped on the other side. It is evident that each has what the other wants. We are asked to furnish the bridge which shall bring them in touch, or rather to grant a franchise to those who will build the bridge if we will construct the approaches. Such we conceive to be a proper function of the Government.

It is clear that the school-teacher in Vermont with $500 to invest can not be sure that the Kansas farm mortgage

offered her is a sound investment. The title of the mortgagor may be defective; the farmer may be improvident; the land may not be productive. She has no way to ascertain these primary facts. But if she is able to buy a long-term bond, with semiannual coupons sure to be promptly paid, secured in common with thousands of like bonds on millions of dollars' worth of farm land, guaranteed by 12 banks with an aggregate capital of not less than six millions, with selected borrowers of known character, with titles examined and all details attended to by trained men, and with Government examination and supervision, she may invest with confidence on a moderate-income basis.

A bond of this character would be safer than a savings bank deposit, and it would bring a higher return than savings banks average. It has been the aim of your committee to devise a system of land banks which shall bring the investor and the farmer together for mutual profit at a moderate cost through the medium of such a bond.

Primary Considerations.

The primary considerations in devising such a system are—

1. Absolute safety and attractive income to the investor.
2. Low interest rates, long-term mortgages, and amortization payments for the farmer.
3. Low cost of administration.
4. Simplicity of organization and operation.
5. Adaptability to every part of the country.
6. Stimulation to the cooperative spirit.

These details will be discussed after a general description of the plan.

General Plan.

Government control of the system is assured by the creation of a nonpartisan Federal farm-loan board, consisting of the Secretary of the Treasury and four members appointed by the President for terms of eight years each and paid from the Public Treasury. (Section 3.)

Twelve Land Banks.

Loans are made to farmers by 12 or more Federal land banks, each operating in a separate district and having a capital of not less than $500,000. If the full amount is not subscribed from private sources, the Government subscribes for as much as may be necessary to make up the required amount. Provision is made for returning the Government subscription after the land banks are firmly established. (Sections 4 and 5.)

Local Associations.

In order to secure intimate touch with the borrowers, it is provided that the land bank shall make loans to farmers through local associations of borrowers, called national farm loan associations. These associations do not conduct a banking business. Their operations are very simple. They admit members who desire to borrow; their directors and loan committees pass on the value of the security and the character of the borrower. Every borrower takes stock in the farm loan association to the amount of 5 per cent of the face of his loan. This amount is subscribed by the association to the stock of the land bank, thus providing for a capital proportionate to the amount of loans, approximately 1 to 20. (Sections 7 and 8.)

Limited or Unlimited Liability.

The farm loan associations may be of limited liability or of unlimited liability. In the former each member is liable for the debts of the association in an amount equal to the face of his subscribed stock; in the latter the member undertakes unlimited liability for all the debts of the association. This individual liability gives to the indorsement of the association solid financial backing. The bill provides that all loans shall be indorsed by the association of which the borrower is a member. (Sections 9 to 12.)

We thus have a mortgage loan, secured by productive farm land, indorsed by a farm loan association. The loan indorsed by a farm loan association with unlimited liability on the part of its members will naturally have a better

standing than loans indorsed by an association in which the liability is limited. Each land bank will keep the two classes of mortgages separate. (Section 16.)

Farm Loan Bonds Secured by Mortgages.

When the land bank has a substantial amount of either kind of mortgages on hand, not less than $50,000, it may issue a like amount of farm loan bonds based on the mortgages as collateral security. Every farm loan bond limited is secured by all the farm mortgages held by the land bank on which there is limited liability of the local members; every farm loan bond unlimited is secured by all the mortgages held by the land bank on which there is unlimited liability of the local members. Because of the unlimited liability, the latter bonds should be sold on a more favorable basis than the former. (Sections 16, 21-25.)

Every Federal land bank guarantees the payment of every bond and coupon issued by every other Federal land bank. This gives them a broad insurance. Section 24.

Expenses and Profits.

The land banks are permitted to charge borrowers 1 per cent more for interest than they pay bondholders. For example, if the current rate on farm-loan bonds is 4 per cent, the bank may charge not to exceed 5 per cent to farmers who borrow. This margin of 1 per cent on the amount of unpaid principal outstanding is available to the bank for its expenses and earnings, but it will probably be largely reduced in practice. The profits go to the local associations in the form of dividends on stock of the land bank held by the associations and reach the borrowers in the form of dividends on stock held by them in the associations. In this way the earnings of the system go to the borrowers, and its cooperative character is assured. If the 1 per cent margin is too high, no harm is done, for the excess comes back to the borrower in dividends. Section 13.

Such is the general plan of the system which we recommend.

Coming now to the details of the bill, we shall first speak of the farm-loan bonds as an attractive investment.

Strength of the Bonds.

It is obvious that the first requisite of a long-term bond, bearing a low rate of interest, is its security. Every reasonable safeguard is provided in the bill.

Restrictions on Mortgages.

The mortgages which stand as security back of the bonds are carefully restricted.

No bank may loan on land outside its district.

Every mortgage deposited as security is on the amortization plan, so that part of the principal is paid up every six months.

The money must be borrowed for productive purposes, for the purchase of a farm for a home, or to liquidate existing indebtedness.

No loan shall exceed 50 per cent of the appraised value of the mortgaged land.

The borrower must engage in the cultivation of the farm mortgaged.

The maximum of loans to one borrower is limited to $10,000.

The purpose for which the loan is obtained must be stated.

The loan becomes due and payable upon breach of any condition of the mortgage. Section 12.

Appraisal.

Every application for a loan must be passed upon by the loan committee of the local association, who shall make a detailed written report, signed by all three members, giving the appraisal of the land as determined by them. The directors and the loan committee must approve the loan, the latter unanimously, before it is recommended to the land bank. The application and the report of the loan committee go to the land bank.

The land bank must refer the application and the report of the loan committee to one or more of the land-bank appraisers for the district. These appraisers are public officials appointed by the Federal Farm Loan Board.

(Sec. 3.) They have no inducement to make an excessive appraisal. It is their duty to make a careful and impartial written report, and no loan may be made unless their report is favorable. The directors of the land bank must then decide whether or not to make the loan.

Every application thus runs the gauntlet of the local loan committee, the local board of directors, the land-bank appraisers, and the land-bank directors.

Whenever mortgages are put up as security for the issue of farm-loan bonds, they are referred by the farm loan board to special appraisers for further appraisal and examination. Section 19.

Security of Bonds.

Every farm loan bond is secured as follows:

1. By the capital, reserves, and earnings of the land bank which issues it.

2. By the capital, reserves, and earnings of the 11 other land banks.

3. By the collective security of all the mortgages in its division (limited or unlimited) of the land bank, the mortgages pledged being at least equal in amount to the outstanding bonds.

Every mortgage pledged as collateral is secured as follows:

1. By the personal undertaking of the borrower.

2. By the security of the mortgaged land, at least double in value to the amount of the loan.

3. By the capital, reserves, and earnings of the local association indorsing the loan.

4. By the individual liability of the members of the indorsing association.

Attractiveness of the Bonds as an Investment.

A bond of the undoubted security possessed by the farm loan bonds above described should prove a most attractive investment. Since all the bonds are guaranteed by all the

land banks they should sell on practically the same basis throughout the country. And it is not too much to expect them to sell on a 4 per cent basis. In such case the farmer would get his loans at 5 per cent.

An absolutely safe investment, with interest payable semiannually, on a 4 per cent basis should be able to compete with other long-term investments or savings banks on its merits.

Tax Exemption.

It is proposed, however, to make these bonds and the income derived therefrom exempt from all Federal, State, and local taxation. This exemption should place them ahead of any bonds bearing the same rate and not enjoying a similar exemption. (Section 29.)

Investment in Farm Loan Bonds.

Farm loan bonds are also made a lawful investment for all fiduciary and trust funds and may be accepted as security for all public deposits. They may also be purchased by banks of the Federal Reserve System. (Section 30.)

Interest Rates to Farmers.

Present interest rates to farmers are so confused with commissions, fees, and charges of various sorts that it is difficult to ascertain the total cost of money on farm mortgages. Dr. C. W. Thompson, specialist in charge of rural organization in the Department of Agriculture, reports that the average rate varies from 5.3 per cent in New Hampshire to 9 per cent and even 10 per cent in certain Southern and Western States, including commissions. We herewith print the table furnished by Dr. Thompson:

Farm mortgage loans—average rates for interest and commission.

Geographic division and State.	Average interest rate.	Average annual commission.[1]	Interest plus commission.	Geographic division and State.	Average interest rate.	Average annual commission.[1]	Interest plus commission.
New England:				South Atlantic—Contd.			
Maine	6.1	0.1	6.2	West Virginia	6.2	0.2	6.4
New Hampshire	5.3	(2)	5.3	North Carolina	6.3	1.4	7.7
Vermont	5.6	(2)	5.6	South Carolina	7.8	.6	8.4
Massachusetts	5.6	(2)	5.6	Georgia	7.6	1.1	8.7
Rhode Island	5.7	.2	5.9	Florida	9.0	.6	9.6
Connecticut	5.7	(2)	5.7	East South Central:			
Middle Atlantic				Kentucky	6.7	.4	7.1
New York	5.5	.1	5.6	Tennessee	7.3	.6	7.9
New Jersey	5.5	.3	5.8	Alabama	8.7	.7	9.4
Pennsylvania	5.5	.3	5.8	Mississippi	8.0	.5	8.5
East North Central:				West South Central:			
Ohio	5.9	.2	6.1	Arkansas	9.0	.6	9.6
Indiana	5.8	.4	6.2	Louisiana	8.2	.4	8.6
Illinois	5.7	.3	6.0	Oklahoma	6.6	1.8	8.4
Michigan	6.3	.3	6.6	Texas	8.4	.6	9.0
Wisconsin	5.7	.1	5.8	Mountain:			
West North Central:				Montana	8.4	1.6	10.0
Minnesota	6.3	.5	6.8	Idaho	8.2	.7	8.9
Iowa	5.6	.3	5.9	Wyoming	9.2	.8	10.0
Missouri	6.2	.6	6.8	Colorado	8.3	.6	8.9
North Dakota	6.9	1.8	8.7	New Mexico	9.7	.8	10.5
South Dakota	7.0	1.0	8.0	Arizona	9.1	.3	9.4
Nebraska	6.3	.8	7.1	Utah	8.6	.4	9.0
Kansas	6.1	.8	6.9	Pacific:			
South Atlantic:				Washington	7.9	.8	8.7
Delaware	5.6	(2)	5.6	Oregon	7.7	.3	8.0
Maryland	5.7	.4	6.1	California	7.4	.2	7.6
Virginia	6.1	.7	6.8				

[1] Where the report shows a commission paid once for all in advance on a loan running more than one year, the equivalent annual commission is used.

[2] Less than one-tenth of 1 per cent.

As the foregoing table gives the average rate, there must be individual cases running much higher. Testimony before the joint subcommittees of the Senate and House Committees on Banking and Currency in 1914 gave the maximum rate as high as 25 per cent, including commissions and charges.

It is readily seen that a rate as low as 5 per cent, 5½ per cent, or even 6 per cent, would be of great benefit to farmers in most sections of the United States.

Long-term Mortgages.

Where money is borrowed by farmers to invest as fixed capital in the purchase of a home, in the erection of farm buildings, in the construction of roads, drains, and fences, in the purchase of machinery and stock, or for like purposes, the loan should be paid out over a long period, varying somewhat with the permanence of the investment. At

present it is difficult for a farmer to borrow money for a longer period than five years, and with renewals come additional commissions, fees, and charges. Even where it is the policy of banks to allow a loan to run for a long period without demanding payment, they insist upon a demand obligation so that their funds will not be tied up in case of sudden calls for deposits. This arrangement leaves the farmer in a continual state of uncertainty, as he may be called on to pay in times of financial stress when it may be impossible to obtain funds.

The bill provides, therefore, that loans may be made for long terms, not to exceed 36 years. It is believed that a longer period would not be advisable for the United States, although farm mortgages are made in Europe for periods as long as 75 years.

The reason for fixing upon a maximum period of 36 years is explained in the following paragraph.

Amortization Payments.

Ultimate payment of the mortgage debt is as important to the farmer as a low rate of interest. Experience teaches that a borrower is most likely to pay out his loan if he pays in small regular installments at fixed periods.

For example, if the farmer pays 5 per cent interest on his loan, payable semiannually, and with each interest payment pays 1 per cent on the principal of his loan, his debt will be entirely paid off in 36 years. If he pays a larger percentage of his loan with each payment, liquidation of the principal will be correspondingly quicker.

The approved practice is to spread the entire payment over the term of the loan in fixed equal semiannual payments. When the rate of interest is fixed and the borrower decides what percentage of the loan he will undertake to pay off each year the semiannual payments are readily figured. All students of rural credits recommend this feature.

Low Cost of Administration.

We have already seen that every reasonable effort must be made to make the farm-loan bonds attractive to the

investor at low rates and that safety is the prime requisite. It is clear, moreover, that the cost of proper safeguards, such as appraisals, examining titles, and the ordinary overhead charges of a banking business, must be met by the borrower in the form of increased interest charges.

Broadly speaking, large expenditures to insure absolute safety will be reflected in the favorable rates on farm-loan bonds. But there is a point at which expenditure would be out of proportion to the results obtained. In the solution of this problem the committee has been guided by sound banking principles and the experience of similar systems in Europe.

Assistance from Borrowers.

Everyone must concede the importance of strong land banks, managed by trained bankers, for the purpose of making sound loans and issuing sound bonds. Salaries and expenses comparable to those of a joint-stock bank must be expected in the performance of these essential functions. But the special capabilities of the land-bank managers must be supplemented by an intimate knowledge of the borrower and his affairs, particularly of the farm land he offers as security. This supplementary knowledge is furnished without additional cost through the local associations.

At the outset we secure the personal interest of the borrower by requiring him to contribute to the capital of the loan association 5 per cent of the face of his loan. This personal stake makes the system mutual and makes the borrower a cooperator. His interest is further secured by his personal liability as a stockholder (double or unlimited, as the case may be). He knows that if the association recommends and indorses a bad loan, he may be called on to help make the loan good.

We should thus expect every member to keep careful watch lest his loan association make unsafe loans, with resulting personal loss to him. We should also expect him to see that the best available men in the community act as directors and as members of the loan committee.

As it is the essence of cooperation that the members shall contribute their services, we shall get all this local care, supervision, and personal interest without the payment of fees or salaries. The only salaried official of loan associations will be the secretary-treasurer, and as all the banking business and most of the bookkeeping will be done by the land bank, and as there will be no local office to be kept open for daily business, his remuneration should be small. We believe the cost of administration will be as low as safety permits.

Simplicity of Organization and Operation

The purpose is to make the system as simple as is consistent with efficiency and security.

A central board to represent the public seems essential.

Land banks to do the technical banking business can not be dispensed with. This business must be done by some one and paid for. It is not the sort of work that members can contribute gratuitously.

The necessary intimate contact with the farmer is done effectively, directly, and cheaply through local cooperative associations.

Farmers of a given locality apply to the land bank of their district for a charter. The land bank supplies circulars, blanks, and all necessary information. After the charter is granted the land bank makes the loans, and the payments are forwarded to it by the local associations. The land banks issue the bonds and get fresh supplies of money to loan to new borrowers.

It is plain that the land banks do the real business of the system. They make the loans and they issue the bonds. But they are under the supervision of the Farm Loan Board, and they command the help of the local associations. The system is simplicity itself.

Adaptability to Every Part of the Country.

A study of the various European systems discloses three main types of land mortgage banks:

1. Cooperative banks, with unlimited liability.

2. Cooperative banks, with limited liability.
3. Joint-stock banks.

Cooperative Associations.

The reported bill permits farmers to organize local associations with double liability, or with unlimited liability. If they will organize mainly on the unlimited plan they will get lower rates of interest; for mortgages carrying unlimited liability of the borrowers for all debts of the association make the safest basis for farm-loan bonds, and hence would insure fresh supplies of capital at the lowest rates.

Your committee has felt it wise to make either form of cooperative association available for the use of farmers, so that they may make their choice. It is quite possible that an association with limited liability may exist in the same community with an unlimited association.

It has not been difficult to devise a plan under which both classes of cooperative associations may be organized and obtain accommodation for their members through the same land banks, with a segregation of assets, expenses, and earnings. Experience alone will demonstrate which type will be most availed of. One type may appeal more strongly to the farmers of one district, with the contrary result in another district.

Joint-stock Banks.

In some localities where land values are settled and farmers are accustomed to borrow from mortgage banks it is quite possible that farmers will prefer to obtain mortgage loans from a joint-stock bank operating under a Federal charter, with Federal restrictions and supervision.

Some farmers, moreover, may object to the association with their neighbors in cooperative undertakings; they may not like the publicity and scrutiny that cooperation entails; they may not be able or willing to subscribe 5 per cent of the face of the desired loan to the stock of the local association. Moreover, associations may start slowly in some States, leaving a wide field unoccupied for years.

Provision is therefore made (section 18) for the organization of joint-stock land banks of not less than $250,000

capital, to be privately subscribed. Their operations will be confined to a single State and adjoining States, and they will be permitted to make loans and to issue farm loan bonds under the supervision of the farm loan board. Their stockholders will assume double liability. Their capital will be readily available from the outset, and they will thus have certain advantages over cooperative banks in getting their money out on loans. In order, therefore, to equalize to some extent the earning power of the two classes of banks, they are limited in the issue of bonds to fifteen times their capital and surplus. The cooperative banks may issue bonds to the amount of twenty times their capital and surplus.

Joint-stock land banks are not permitted to engage in any business but making farm mortgage loans and issuing bonds. In States with populations exceeding two millions of people, their capital stock must be not less than $500,000. Their bonds are called joint-stock bonds, and must be in such form as to be readily distinguished from bonds issued by Federal (cooperative) land banks. They are given a free hand as to interest rates on loans and bonds, except that the margin for expense and profit must not exceed 1 per cent a year on the principal of outstanding loans. (Section 18.)

Provision is thus made for the existence of the three types of mortgage banks. They will be competitors in granting loans and in selling bonds, but they will all be under strict Government supervision. Each type, in order to survive, must prove its usefulness. Your committee feels that there is a field for all three.

Land Bank Agents.

It is desired that local associations organize in every community at an early date, but it is also recognized that on account of peculiar local conditions some communities may be without local associations or joint-stock land banks indefinitely. The farm loan board is given power in such cases to authorize Federal land banks to make loans to farmers through duly incorporated banks, trust companies, and mortgage institutions.

Such loans would be subject to the conditions of loans made through farm-loan associations, and the borrower would be required to contribute 5 per cent of the face of his loan to the capital of the land bank. The agent would indorse the loan and become responsible for its payment and the collection of interest and amortization installments, receiving such compensation as might be agreed, not to exceed one-half of 1 per cent of the total unpaid amount of the loan. (Section 17.)

In this way it is hoped to take advantage of existing institutions in districts which are not otherwise adequately served. It is feared that the formation of cooperative associations would be retarded if the privilege of making loans through agents should be granted too freely. Hence the restriction expressed at the beginning of section 17.

Government Depositaries.

The land banks are authorized to act as Government depositaries and are required to act as financial agents of the Government. They thus become instrumentalities of the Federal Government. (Section 6.)

Reserves and Dividends.

Farm-loan associations and land banks are required to carry semiannually to reserve account 25 per cent of their net earnings until the reserves equal 20 per cent of the outstanding capital and to maintain the reserves at 20 per cent. After the reserves equal the required percentage of the capital stock 5 per cent of the net earnings must be carried to reserve annually. After the reserve requirements are met the balance of net earnings is available for dividends. Sections 26 and 27.

State Legislation.

It is well understood that the laws in the several States vary as to land titles, registry, exemptions, homestead rights, foreclosure, and equities of redemption. It is therefore made the duty of the farm loan board to investigate these questions in each State and to declare mortgages

ineligible as security for farm-loan bonds in those States where the laws do not give adequate protection to those loaning on first mortgage. Very few, if any, States will fall within this rule, and they will doubtless amend their laws promptly in order to bring the benefits of the farm-loan system within reach of their citizens. (Section 31.)

Other Provisions.

There are other important provisions of the proposed bill which need no discussion here, notably those concerning defaulted loans (section 28), examinations (section 32), penalties for accepting gifts, bonuses, or commissions, for giving false information, for embezzlement, for counterfeiting, etc. (section 33), dissolution of loan associations and land banks (section 35), and appointment of receivers (section 35).

Stimulating the Cooperative Spirit.

The rapid increase of tenant farmers and the tendency to abandon agriculture and seek the larger centers of population has become a national menace in this country, as well as in Europe. It increases the cost of living and causes a one-sided development. Most civilized nations are already offering direct aid and other inducements to persuade the people back to the land. We believe that the United States can well afford the moderate encouragement provided in this bill.

Much has been accomplished in Europe by legislation that encourages cooperation. There are societies to organize cooperative institutions, lecturers who go about to spread the cooperative gospel, and training schools for boys, girls, and adults. There are laws establishing systems of personal rural credits, as well as land-mortgage systems. There are cooperative buying, cooperative selling, cooperative creameries, markets, breeding establishments, insurance companies, and the like. These are all important, especially personal credits.

Our country lags far behind Europe in most matters of cooperation among farmers. There are conditions which render it more difficult here than in older countries. But

so far as cooperation is applicable, and as speedily as we can adapt it to our own conditions, it should be established.

The framers of this bill realize that it is but one factor in the vast field for national cooperation that lies before the American farmer. But they entertain the hope that organization for the purpose of securing land mortgage credit will bring neighboring farmers into closer touch all over the Union and will stimulate the cooperative spirit. Those men who organize farm loan associations will become better acquainted and more trustful of each other, so that it will be comparatively easy to form organizations among the land mortgage groups for personal-credit unions and various forms of cooperative activity.

In this connection we desire to acknowledge the debt we owe to those pioneers who have awakened the interest of the American people in rural credits. Largely through the efforts of Senator Fletcher of Florida, the American Commission and the United States Commission went to Europe in 1913 and gathered the information and evidence contained in Senate Document No. 214, Sixty-third Congress, first session, entitled "Agricultural Cooperation and Rural Credit in Europe."

Summary.

It is believed that the system of land banks outlined in the proposed bill affords a safe and attractive farm loan bond for the investing public; low interest rates, long-term mortgages, and easy payments for the farmer; low cost of administration; simplicity of organization and operation; adaptability to the needs of every section; and stimulation to the spirit of generous cooperation among farmers.

THE FEDERAL FARM LOAN ACT.

AS AMENDED TO JULY 16, 1932, EXCLUSIVE OF PROVISIONS RELATING TO FEDERAL INTERMEDIATE CREDIT BANKS.

An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes. (July 17, 1916, c. 245, 39 Stat. 360.)

§ 641. *"Federal Farm Loan Act"; administration by Federal Farm Loan Board.*—The Act of July 17, 1916 (c. 245, § 1, 39 Stat. 360), as amended by Act of March 4, 1923 (c. 252, Title I, § 1, 42 Stat. 1454), to include Federal intermediate credit banks may be cited as the "Federal Farm Loan Act." Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created. (July 17, 1916, c. 245, § 1, 39 Stat. 360; Mar. 4, 1923, c. 252, Title I, § 1, 42 Stat. 1454.)

§ 642. *"First mortgage" and "farm loan bonds" defined.*—Wherever the term "first mortgage" is used in this Act it shall be held to include such classes of first liens on farm lands as shall be approved by the Federal Farm Loan Board, and the credit instruments secured thereby.

§ 651. *Federal Farm Loan Bureau; creation; supervision by board.*—There shall be established at the seat of government in the Department of the Treasury a bureau charged with the execution of this Act and of all Acts amendatory thereof, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board. (July 17, 1916, c. 245, § 3, 39 Stat. 360.)

§ 659. *Attorneys, experts, and other employees; employment; salaries and fees.*—The Federal Farm Loan Board shall be authorized and empowered to employ such attorneys, experts, assistants, clerks, laborers, and other em-

ployees as it may deem necessary to conduct the business of said board. All salaries and fees authorized in 12 U. S. C. 652, 653, and 655 to 659 [F. F. L. Act § 3] and not otherwise provided for shall be fixed in advance by said board and shall be paid in the same manner as the salaries of the Federal Farm Loan Board. All such attorneys, experts, assistants, clerks, laborers, and other employees, and all registrars, examiners, and appraisers shall be appointed without regard to the provisions of 5 U. S. C. 632, 635, 637, 638, and 640 to 642, Executive Departments and Government Employees [Jan. 16, 1883, 22 Stat. 403], and amendments thereto, or any rule or regulation made in pursuance thereof and may be classified without regard to 5 U. S. C., c. 13, Executive Departments and Government Employees [Classification Act of 1923]: *Provided*, That nothing herein shall prevent the President from placing said employees in the classified service. (July 17, 1916, c. 245, § 3, 39 Stat. 361; Mar. 4, 1925, c. 524, § 4, 43 Stat. 1263.)

§ 676. *Time of commencement of corporate existence of land banks; powers enumerated.*—Upon duly making and filing such organization certificate the bank shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession until it is dissolved by Act of Congress or under the provisions of this Act.

Third. To make contracts.

Fourth. To sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons.

Fifth. To elect or appoint directors, and by its board of directors to elect a president and a vice president, appoint a secretary and a treasurer and other officers and employees, define their duties, require bonds of them, and fix the penalty thereof; by action of its board of directors dismiss such officers and employees, or any of them, at pleasure and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, subject to the supervision and regulation of the Federal Farm Loan Board, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected, its officers elected or appointed, its property transferred, its general business conducted and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise, by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business herein described. (July 17, 1916, c. 245, § 4, 39 Stat. 363.)

§ 771. Second. *Agreement for repayment on amortization plan.*—Every such mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual or semiannual instalments sufficient to cover, first, a charge on the loan at a rate not exceeding the interest rate in the last series of farm loan bonds issued by the land bank making the loan; second, a charge for administration and profits at a rate not exceeding 1 per centum per annum on the unpaid principal, said two rates combined constituting the interest rate on the mortgage.

§ 781. *Enumerated powers.*—Every Federal land bank shall have power, subject to the limitations and requirements of this Act—

Second. *Investing funds in farm first mortgages.*—To invest such funds as may be in its possession in the purchase of qualified first mortgages on farm lands situated within the Federal land bank district within which it is organized or for which it is acting. (July 17, 1916, c. 245, § 13, 39 Stat. 372.)

Third. *Receipt and deposit of mortgages as collateral for bonds; collection of moneys payable under mortgages and bonds.*—To receive and to deposit in trust with the farm loan registrar for the district, to be by him held as collateral security for farm loan bonds, first mortgages upon farm land qualified under 12 U. S. C. 771 [F. F. L. Act § 12], and to empower national farm loan associations, or duly authorized agents, to collect and immediately pay

over to said land banks the dues, interest, amortization installments and other sums payable under the terms, conditions, and covenants of the mortgages and of the bonds secured thereby. (July 17, 1916, c. 245, § 13, 39 Stat. 372.)

Ninth. *Charging fees for loans.*—To charge applicants for loans and borrowers, under rules and regulations promulgated by the Federal Farm Loan Board, reasonable fees not exceeding the actual cost of appraisal and determination of title. Legal fees and recording charges imposed by law in the State where the land to be mortgaged is located may also be included in the preliminary costs of negotiating mortgage loans. The borrower may pay such fees and charges or he may arrange with the Federal land bank making the loan to advance the same, in which case said expenses shall be made a part of the face of the loan and paid off in amortization payments. Such addition to the loan shall not be permitted to increase said loan above the limitations provided in 12 U. S. C. 771 [F. F. L. Act § 12]. (July 17, 1916, c. 245, § 13, 39 Stat. 372.)

§ 791. *Enumeration of restrictions.*—No Federal land bank shall have power—

Fifth. *Demanding unauthorized commissions.*—To demand or receive, under any form or pretense, any commission or charge not specifically authorized in this Act (July 17, 1916, c. 245, § 14, 39 Stat. 372.)

STATE LEGISLATION IMPAIRING SECURITY OF FARM LOANS.

§ 971. *Examination of State laws as to conveying and recordation.*—It shall be the duty of the Farm Loan Commissioner to make examination of the laws of every State of the United States and to inform the Federal Farm Loan Board as rapidly as may be whether in his judgment the laws of each State relating to the conveying and recording of land titles, and the foreclosure of mortgages or other instruments securing loans, as well as providing homestead and other exemptions and granting the power to waive such exemptions as respects first mortgages, are such as to

assure the holder thereof adequate safeguards against loss in the event of default on loans secured by any such mortgages. (July 17, 1916, c. 245, § 30, 39 Stat. 382.)

§ 972. *First mortgages as basis of issue of bonds; assistance in examinations.*—Pending the making of such examination in the case of any State, the Federal Farm Loan Board may declare first mortgages on farm lands situated within such State ineligible as the basis for an issue of farm loan bonds; and if said examination shall show that the laws of any such State afford insufficient protection to the holder of first mortgages of the kinds provided in this Act, said Federal Farm Loan Board may declare said first mortgages on land situated in such State ineligible during the continuance of the laws in question. In making his examination of the laws of the several States and forming his conclusions thereon said Farm Loan Commissioner may call upon the office of the Attorney General of the United States for any needed legal advice or assistance, or may employ special counsel in any State where he considers such action necessary. (July 17, 1916, c. 245, § 30, 39 Stat. 382.)

§ 973. *Statement by Loan Board; noncompliance of State laws with requirements of board.*—At the request of the Executive of any State the Federal Farm Loan Board shall prepare a statement setting forth in what respects the requirements of said board can not be complied with under the existing laws of such State. (July 17, 1916, c. 245, § 30, 39 Stat. 382.)

§ 983. *Charging or receiving unauthorized fee or commission; disclosing names of borrowers.*—No land bank or national farm loan association organized under this Act shall charge or receive any fee, commission, bonus, gift, or other consideration not herein specifically authorized. No examiner, public or private, shall disclose the names of borrowers to other than the proper officers of a national farm loan association or land bank without first having obtained express permission in writing from the Farm Loan Commissioner or from the board of directors of such association

or bank, except when ordered to do so by a court of competent jurisdiction or by direction of the Congress of the United States, or of either House thereof, or any committee of Congress or of either House duly authorized. Any person violating any provision of this paragraph shall be punished by a fine of not exceeding $5,000 or by imprisonment not exceeding one year, or both. (July 17, 1916, c. 245, § 31, 39 Stat. 382.)

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